



ELEMENT THREE

Review Assurances, Local 5 Year Plan, Contracts and Policies and Procedures

***Requirements:
(29 CFR 37.54(d)(1)(I) and
(d)(2)(I), (iii) and (iv))***

***Address:
(29 CFR 37.20-22) and
(29 CFR 37.54(d)(2)(I), (III), (IV))***



ELEMENT THREE

Review all Agreements for EO Provisions and Include a Nondiscrimination Assurance

(29 CFR 37.54(d)(1)(I) and (d)(2)(I), (iii) and (iv) and 29 CFR 37.20-22 and 29 CFR 37.54(d)(2)(I)(III), & (IV))

Purpose

The state shall ensure that nondiscrimination and equal opportunity provisions of WIA are incorporated in all grants, agreements or other similar applications for Federal financial assistance under WIA. Each application for WIA funds will include the specified assurance committing the potential sub-recipient to comply fully with the nondiscrimination and equal opportunity provisions of the Act. The assurance is deemed incorporated, whether or not it is physically incorporated in the resulting contract or other arrangement.

Narrative

- **Each grant applicant, and each training provider seeking eligibility, includes in its application for financial assistance under Title I of WIA the required EO assurance. (See CFR 37.20(a)(1)).**

The State of Arizona complies and will continue to comply with the requirements of 29 CFR 37.20(a)(1) related to the requirement assurance:

Which prohibits discrimination against all individuals in the U.S. based on race, color, religion, sex, national origin, age, disability, political affiliation or belief and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the U.S. As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the grant application assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws: Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA



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Title I-financially assisted program or activity; Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin; Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities; the Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in educational program. The grant applicant also assures that it will comply with 29 CFR Part 37 and all other regulations implementing the laws listed above. The assurance applicant's operation of the WIA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

- **The required assurance is incorporated into each grant, cooperative agreement, contract, or other arrangement whereby Federal financial assistance under Title I of WIA is made available. NOTE: 29 CFR 37.20(a)(2) provides that the assurance may be incorporated by reference into these documents.**

The State of Arizona is providing pass-through dollars to sixteen (16) counties or designated local areas. Contracts provided for each local area through the state contracts office include in each contract agreement assuring each entity complies with this requirement.

- **Each grant applicant and each training provider seeking eligibility, is able to provide programmatic and architectural accessibility for individuals with disabilities (See Subpart C of 29 CFR Part 32).**

Each grant applicant has been issued EO Nondiscrimination Policies, "10. Accessibility: Section 504".

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10. Accessibility: *The term “when viewed in its entirety” is essential to the concept of program accessibility. The Department of Labor’s regulations implementing Section 504 require that each recipient/sub-recipient of federal financial assistance operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to qualified disabled individuals. It does not mean that each of a recipient’s/sub-recipient’s existing facilities (or every part of an existing facility) need be accessible to and usable by disabled individuals. When an entire (i.e., all aspects of a) program or activity is analyzed, however, equal opportunities for participation must exist for disabled individuals.*

For example, if a recipient/sub-recipient offers a course of instruction that has several sections, the course need not be accessible to disabled individuals. So long as enough sections are available to permit full participation by disabled individuals, program accessibility will be achieved. If a recipient/sub-recipient offers a service to its program participants such as transportation, every vehicle utilized need not be accessible to disabled individuals. So long as the program or activity (including its transportation elements), when viewed in its entirety, is accessible, the program accessibility requirement will have been met.

Section 504 requires “program accessibility”, not “building accessibility” thus allowing recipients/sub-recipients flexibility in selecting the means of compliance. Because of this, renovation of an old facility or construction of a new facility may not be necessary. Some other methods of achieving compliance in program accessibility could be used, such as rescheduling of programs or activities to already accessible buildings or parts of buildings, selecting alternate sites, selecting alternate methods of delivery, or use of auxiliary aids. Whenever methods other than facility renovation and construction are successful in achieving program accessibility, the time and expense of facility renovation work may be avoided. This means that modifications of existing facilities need be undertaken only where other methods are inadequate to assure that a program or activity is available to

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disabled individuals. Sub-recipients are not required to establish a barrier-free environment. Physical barriers may exist in sub-recipient's facilities so long as these barriers do not hinder the full participation of disabled individuals in each program or activity when it is viewed in its entirety.

Recipients/subrecipients shall administer program and activities in the most integrated setting appropriate to the needs of qualified disabled individuals but should not be unduly segregated or subjected to different or separate treatment. As program options are reviewed in order to select a particular course of action to achieve accessibility, the option selected should whenever possible, be the one that makes a disabled individual's participation the least different or separate from (or perhaps the same as) those of non-disabled individuals.

Creating separate or different programs and activities that are not necessary for the individuals or encouraging the individual's participation in separate or different programs where such is not required may be most costly for the sub-recipient and less advantageous for the disabled individual, aside from being a violation of Section 504. For example, if one of several sections of a course of instruction were made accessible for persons in wheelchairs, it would violate the "most integrated setting appropriate" principle to schedule all disabled individuals (including those with hearing and vision impairments) for that section. Many disabled individuals will require few or no adjustments or modification in order to participate fully in programs or activities.

Because of the integrated setting requirement, there have been questions raised as to whether programs are "accessible" if persons in wheelchairs are required to use routes to and from programs that are not as direct as those used by non-mobility impaired persons (e.g., freight elevators, side doors, having to leave a facility and re-enter). In order to preserve the "most integrated setting appropriate" principle when alternate routes are necessary, all persons, not merely those with mobility impairments, should be permitted to use the alternate routes. These alternate routes should be made into regular pedestrian passages, and upgraded, if necessary, with lighting, maintenance, and attention accorded primary entrances and exits.

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Another area that should be considered is whether it is necessary to make secondary facilities (e.g., corporate, fountains, and telephones) accessible. This would depend on considerations such as the distance to the nearest accessible facility and the number of participants in the accessible program or activity. If, for example, a particular lecture hall is used by several hundred persons at a time, accessibility should be achieved in secondary facilities also. However, if a small section of an electronics course is made accessible, questions regarding the accessibility of secondary facilities will depend on the distance to the nearest accessible facilities, the number of students in the section, and other uses of the building.

If programs cannot be made accessible without structural changes to facilities, some items need to be kept in mind. There is no provision in the Section 504 requirements that would exempt historical buildings from the accessibility standard.

While the GAE believes that it is important to preserve historical structures, it also believes that the flexibility of the requirements contained in the regulations will permit subrecipients, with appropriate technical assistance and advice, to make their program accessible without impairing the integrity of the historical facilities.

Mobility impaired persons is the group predominantly presented in the examples thus far. However, persons who are hearing or vision impaired may also be subjected to similar unequal treatment.

The major problems of accessibility encountered by persons who are hearing or vision impaired include warning signals, use of telephones, hazards, and identification of specific facilities.

Subrecipients must make auxiliary aids available to applicants and participants in order to eliminate barriers during the intake, assessment and referral process. Subrecipients should consult with the individual to determine the most effective aid.

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Interpreters, TTY notetakers, typewriters, taped or Braille materials are examples of auxiliary aids.

In the case where an individual demands a specific form of aid, the subrecipient does not need to meet such a demand if the alternative aid which the subrecipient is willing to provide is effective in making the program accessible to the applicant or participant.

Subrecipients must also accommodate the known physical or mental limitations of their otherwise qualified disabled employees, applicants for employment, and participants in an employment and training program, as long as the accommodations do not impose an undue hardship on the recipient. A "reasonable accommodation" is an adaptation of the workplace, the equipment, or the job itself, which enables a disabled individual to do a particular job for which he or she is qualified in training and abilities. For a disabled individual person to be "qualified", he or she must be able to perform, with reasonable accommodations, if necessary, the essential elements of the job. A disabled person who cannot perform essential functions, even with reasonable accommodations, is not qualified, and therefore may be denied employment or advancement in employment.

Subrecipients can comply with their obligation to provide auxiliary aids and to effectively serve persons of limited English speaking ability by establishing and implementing effective communication procedures. The procedure developed should reflect the specific kinds of services provided and the particular administrative procedure of the individual subrecipient

- **Job training plans, contracts, assurances, and other similar agreements entered into by recipients are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity (See 29 CFR 37.54(b)(2)(iv)).**

The State of Arizona complies and will continue to comply with the requirements of 29 CFR 37.54(b)(2)(iv). Local area plans, contracts and similar arguments entered into by recipients through contracts administered through the state contracts office.

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- **State and local-level policy issuance's, or issuance's from other recipients, are not discriminatory either in intent or effect (See 29CFR37.54(d)(2)(iii)).**

The State of Arizona has issued information memos and EO policy for all local areas receiving financial assistance through Title I-B.

- **Policies on WIA Title I nondiscrimination and/or equal opportunity issues are developed and implemented in a timely manner.**

The State provides timely issuance of Equal Opportunity and Nondiscrimination policies and further ensures that such issuance are nondiscriminatory.

The State EO Officer works in conjunction with the WDA Contracts Staff and the Procurement/Purchasing Department in the review of assurance, job training and contract procedures. To ensure compliance of WIA nondiscrimination requirements, the following attachments are used in reviews:

1. DES Special Terms and Conditions, and
2. Special Rules and Requirements